

March 19, 1976

I would like to draw to attention maybe the doctors wives should be consulted in this. The group that is apt to go for collections above the \$500,000 are the professional group.

I would oppose the amendment as a further attempt to make a better opt-out provision, to try to make the provision constitutional in a total trickery game upon the one and a half million people in this state for the benefit of 1,500 doctors who are going to find out they are very sorry it was passed, if we pass this bill. Thank you.

PRESIDENT: Senator Barnett moves the question. Are there five seconds? I see five seconds. The question is shall debate now cease. Record your vote. Record.

CLERK: 26 ayes, 0 nays.

PRESIDENT: Debate not ceases. Before the Chair gets anymore complaints, I have had some complaints about relevancy on this particular item. When you're talking about opting in or opting out of the bill it seems to the Chair that that puts the entire bill at issue here. So that's why debate on this particular matter has been a little broader than has on others. Would you close debate please, Senator Cavanaugh.

SENATOR CAVANAUGH: Mr. President, members of the Legislature. It's a little difficult to have Senator Chambers and Senator DeCamp fighting with each other and opposing my amendment. I'm not sure what to make of that.

The amendment is basically a very simple proposition, are you going to allow people of the State of Nebraska to know and understand what this act provides and to make an intelligent decision about it? The whole constitutional premise of this act, this legislation, rests upon the ability of the citizens of the state to make a decision. If the citizens of the state are not provided the opportunity to make an election to decide to come under this act or not come under this act, this act is clearly then unconstitutional.

The next question to be presented is ... is the provision for notice or election currently in the act of sufficient clarity that a court would find that a person actually had notice, understood his option and was in a position to make an intelligent decision. I think that any court would clearly find the current provisions of the act not to meet that constitutional standard and so the act will fall.

I tell you clearly today, so that you can all at least understand my point of view, that if you do not accept this amendment I believe that this act will be found unconstitutional. You are not allowing the people of the State of Nebraska to make an informed choice whether or not to fall under the provisions of this act and limit their natural rights of recovery in the case of negligence and malpractice. Therefore, you are in effect denying them that right. I think that any court would find that ... and that this whole entire affair will be back in the next session of the Legislature because this act has been rendered unconstitutional.

CS653